

IN THE UNITED STATES OF AMERICA
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION

UNITED STATES OF AMERICA,)	
)	
v.)	CASE NO. 2:08CR36-1
)	(Financial Litigation Unit)
DANIELLE VICTORIA BIGWITCH,)	
AKA/VICCI BIGWITCH,)	
)	
and)	
)	
EASTERN BAND OF CHEROKEE INDIANS,)	
Garnishee.)	

ORDER OF GARNISHMENT

THIS MATTER is before the Court on the answer of the Eastern Band of Cherokee Indians (“Tribe”), as the Garnishee and the United States of America.

On December 4, 2009, this Court sentenced the Defendant to serve 192 months incarceration for her conviction of second degree murder, in violation of 18 U.S.C. §§ 1111,1153 and 2. *Judgment in a Criminal Case, filed December 22, 2009.* As part of that Judgment, the Defendant was ordered to pay an assessment of \$100.00 and restitution of \$863,233.68 to the victims of the crime. *Id.* Subsequently, the United States sought to garnish defendant Danielle Victoria Bigwitch’s gaming *per capita* revenue. On May 10, 2010, the Court entered a Writ of Continuing Garnishment to the Eastern Band of Cherokee Indians. The United States is entitled to garnishment and has satisfied the prerequisites set forth in 15 U.S.C. §1673.

The Tribe filed and answer on July 1, 2010, and states that it is a sovereign Indian Nation and; that it anticipates receiving future per capita distributions, generally in June and December of each year.

Indian tribes have traditionally been considered sovereign nations which possess common

law immunity from suit; however, that immunity may be abrogated by Congress. *C & L Enter., Inc. v. Citizens Band of Potawatomi Indian Tribe of Oklahoma*, 532 U.S. 411(2001). When Congress enacted the Federal Debt Collection Procedure Act in 1990, (“FDCPA”), it defined a “garnishee” as any person who has custody of any property in which the debtor has a substantial nonexempt interest; and, it defined “person” as including an Indian tribe. 28 U.S.C. §§ 3002(7) and (10). “Congress has the power to statutorily waive a tribe’s sovereign immunity.” *Northern States Power Co. v. Prairie Island Mdewakanton Sioux Indian Comty.*, 991 F.2d 458, 462 (8th Cir. 1993). The Federal Debt Collection Procedure Act uses unequivocal language to waive this immunity. *C&L Enter., supra*.

As a result, the Tribe as the Garnishee, must pay over to the federal government any property in which the Defendant has a nonexempt interest. *United States v. Weddell*, 12 F.Supp.2d 999, 1000 (D.S.D. 1998), *aff’d*, 187 F.3d 634 (table), 1999 WL 319323 (8th Cir. 1999). That property includes a *per capita* distribution to tribal members of gaming revenues. *Id.*; *accord, In re Kedrowski*, 284 B.R. 439 (Bankr.W.D. Wis. 2002).

IT IS THEREFORE, ORDERED that an Order of Garnishment is hereby **ENTERED** in the amount of \$862,242.68, computed through May 4, 2010, which attaches to each *per capita* distribution of gaming revenues on account of the defendant Danielle Victoria Bigwitch, until the full amount of the Judgment is satisfied.

Signed: July 29, 2010

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

